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HOUSE BILL 460

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR CERTAIN SALES OF CHEMICALS OR REAGENTS USED IN THE MANUFACTURING PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within

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1 sixty days from the date that the notice requiring possession
2 of these nontaxable transaction certificates is given the
3 seller or lessor by the department, deductions claimed by the
4 seller or lessor that require delivery of these nontaxable
5 transaction certificates shall be disallowed. The nontaxable
6 transaction certificates shall contain the information and be
7 in a form prescribed by the department. The department by
8 regulation may deem to be nontaxable transaction certificates
9 documents issued by other states or the multistate tax
10 commission to taxpayers not required to be registered in New
11 Mexico. Only buyers or lessees who have a registration number
12 or have applied for a registration number and have not been
13 refused one under Subsection C of Section 7-1-12 NMSA 1978
14 shall execute nontaxable transaction certificates issued by the
15 department. If the seller or lessor has been given an
16 identification number for tax purposes by the department, the
17 seller or lessor shall disclose that identification number to
18 the buyer or lessee prior to or upon acceptance of a nontaxable
19 transaction certificate. When the seller or lessor accepts a
20 nontaxable transaction certificate within the required time and
21 in good faith that the buyer or lessee will employ the property
22 or service transferred in a nontaxable manner, the properly
23 executed nontaxable transaction certificate shall be conclusive
24 evidence, and the only material evidence, that the proceeds
25 from the transaction are deductible from the seller's or

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1 lessor's gross receipts.

2 B. Properly executed documents required to support
3 the deductions provided in Sections 7-9-57, 7-9-58, 7-9-65 and
4 7-9-74 NMSA 1978 should be in the possession of the seller at
5 the time the return is due for receipts from the transactions.
6 If the seller is not in possession of these documents within
7 sixty days from the date that the notice requiring possession
8 of these documents is given to the seller by the department,
9 deductions claimed by the seller or lessor that require
10 delivery of these documents shall be disallowed. These
11 documents shall contain the information and be in a form
12 prescribed by the department. When the seller accepts these
13 documents within the required time and in good faith that the
14 buyer will employ the property or service transferred in a
15 nontaxable manner, the properly executed documents shall be
16 conclusive evidence, and the only material evidence, that the
17 proceeds from the transaction are deductible from the seller's
18 gross receipts.

19 C. Notice, as used in this section, is sufficient
20 if the notice is mailed or served as provided in Subsection A
21 of Section 7-1-9 NMSA 1978. Notice by the department under
22 this section shall not be given prior to the commencement of an
23 audit of the seller required to be in possession of the
24 documents.

25 D. To exercise the privilege of executing

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1 appropriate nontaxable transaction certificates, a buyer or
2 lessee shall apply to the department for permission to execute
3 nontaxable transaction certificates, except with respect to
4 documents issued by other states or the multistate tax
5 commission that the department has deemed to be nontaxable
6 transaction certificates. If a person is shown on the
7 department's records to be a delinquent taxpayer or to have a
8 non-filed period, the department may refuse to approve the
9 application of the person until the person has filed returns
10 for all non-filed periods and is no longer shown to be a
11 delinquent taxpayer, and the taxpayer may protest that refusal
12 pursuant to Section 7-1-24 NMSA 1978. Upon the department's
13 approval of the application, the buyer or lessee may request
14 appropriate nontaxable transaction certificates for execution
15 by the buyer or lessee; provided that if a person is shown on
16 the department's records to be a delinquent taxpayer or to have
17 a non-filed period, the department may refuse to issue
18 nontaxable transaction certificates to the person until the
19 person has filed returns for all non-filed periods and is no
20 longer shown to be a delinquent taxpayer. The taxpayer may
21 protest that refusal pursuant to Section 7-1-24 NMSA 1978. The
22 department may require a buyer or lessee requesting and
23 receiving nontaxable transaction certificates for execution by
24 that buyer or lessee to report to the department the names,
25 addresses and identification numbers assigned by the department

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1 of the sellers and lessors to whom they have delivered
2 nontaxable transaction certificates. The department may
3 require a seller or lessor engaged in business in New Mexico to
4 report to the department the names, addresses and federal
5 employer identification numbers or state identification numbers
6 for tax purposes issued by the department of the buyers or
7 lessees from whom the seller or lessor has accepted nontaxable
8 transaction certificates."

9 Section 2. Section 7-9-65 NMSA 1978 (being Laws 1969,
10 Chapter 144, Section 56) is amended to read:

11 "7-9-65. DEDUCTION--GROSS RECEIPTS TAX--CHEMICALS AND
12 REAGENTS.--

13 A. The following may be deducted from gross receipts:

14 (1) receipts from selling chemicals or reagents
15 to ~~[any]~~ a mining, milling or oil company for use in:

16 (a) processing ores or oil in a mill, smelter
17 or refinery; or ~~[in]~~

18 (b) acidizing oil wells ~~[and]~~;

19 (2) receipts from selling chemicals or reagents
20 in lots in excess of eighteen tons ~~[may be deducted from gross~~
21 ~~receipts]~~; or

22 (3) receipts from selling chemicals or reagents
23 to a person engaged in the business of manufacturing for use in
24 the manufacturing process if that person:

25 (a) provides documentation acceptable to the

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1 department that the person spent at least five million dollars
2 (\$5,000,000) on chemicals or reagents during the previous
3 calendar year for use in the manufacturing process; and
4 (b) delivers a nontaxable transaction
5 certificate to the seller.

6 B. Receipts from selling explosives, blasting powder
7 or dynamite may not be deducted from gross receipts."

8 Section 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2006.

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